

WISHA Interim Operations Memorandum
Washington Department of Labor and Industries
#99-1-B
DECERTIFICATION OF ASBESTOS ABATEMENT CONTRACTORS AND SUPERVISORS

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WISHA Policy & Technical Services

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Background

The Department of Labor and Industries (L&I), under Title 49.26 RCW and WAC 296-65-050(6), may suspend or revoke any asbestos certificate issued for failure to comply with applicable safety and health standards. WAC 296-65-050 provides the basis for such suspension or revocation, and applies to certificate holders who are determined to be incompetent to carry out the work for which the certificate was issued or who constitute a risk to employees or to the public. Decertification of asbestos certificate holders will be based upon their failure to comply with WAC 296-65 and WAC 296-62-077.

Asbestos supervisors and asbestos abatement contractors are trained and certified to perform asbestos projects in compliance with WAC 296-65 and WAC 296-62-077. When the failure to comply with the applicable safety and health standards becomes repetitive and significant, or otherwise constitutes a serious risk of asbestos exposure to employees and to the public, the Asbestos Certification Program will review the competency of the certificate holder. After such a review, a determination will be made whether to suspend or revoke the certificate.

This interpretive memorandum describes the review process and provides guidance to WISHA enforcement staff with respect to the decertification of asbestos supervisors and asbestos abatement contractors.

Policy

1. Prior to issuing asbestos-related citations including significant violations (see #2 below), WISHA enforcement staff are expected to review the employer history for previous citations for significant violations.
 - a. In any asbestos-related inspection where significant violations are issued, WISHA enforcement staff must document the asbestos supervisor's name and certificate number, as well as the abatement contractor certificate number, on the WISHA 1-B.
 - b. If the citation of an asbestos project will represent the third inspection in three years involving a particular asbestos supervisor or asbestos abatement contractor and resulting in significant violations, the industrial hygiene regional supervisor are expected to forward a request for competency review to the Asbestos Certification Program in WISHA Policy & Technical Services.

2. In reviewing the competency of asbestos supervisors and asbestos abatement contractors, the Asbestos Certification Program must consider the following:
 - a. Significant Violations of WAC 296-65 or WAC 296-62-077
 - i. A violation will be considered significant if it constitutes a health risk due to asbestos exposure to employees or to the public.
 - ii. Significant violations will be classified serious, repeat or failure to abate violations.
 - iii. The following violation descriptions or categories related to WAC 296-65 or WAC 296-62-077 will be considered significant:
 - air monitoring
 - enclosure or isolation of asbestos removal (isolation techniques)
 - engineering controls
 - work practices
 - hygiene facilities and practices
 - respiratory protection
 - training
 - use of uncertified workers, or
 - housekeeping
 - any willful violation.
 - b. Frequency of Significant Violations of WAC 296-65 or WAC 296-62-077
 - i. Asbestos supervisors or asbestos abatement contractors involved in three or more asbestos projects where significant violations have been issued will be reviewed.
 - ii. Asbestos supervisors or asbestos abatement contractors involved in asbestos projects where a willful violation has been issued will be reviewed.
 - iii. Significant violations must have occurred within the last three years to trigger a review of competency.
3. When the frequency of significant violations warrants a review of the competency of a certified asbestos supervisor, the asbestos certification program will conduct the review according to the following guidelines.
 - a. The evaluation will begin with a preliminary review of the competency of the certified asbestos supervisor to carry out the work for which the certificate was issued. Such preliminary competency evaluations must consider the following questions:
 - i. Is there an apparent disregard of the standard directly related to supervision of the project(s)?
 - ii. Do the significant violations involve serious health risk to employees and/or the public?
 - iii. Are there any extenuating circumstances beyond the supervisor's control?
 - iv. Is the supervisor currently on probationary status?

- b. After preliminary review of the competency of a certified supervisor, the industrial hygienist responsible for overseeing the asbestos certification program will notify the certified asbestos supervisor of the department's intention to take one of the following actions.
 - i. Take no formal action.
 - ii. Place the supervisor on probationary status for one year, giving the certified asbestos supervisor the opportunity to request a conference as described in WAC 296-65-050(4). If a significant violation occurs during an asbestos project supervised by a certified asbestos supervisor on probationary status, an additional review for decertification will be conducted
 - iii. Propose decertification through the written notice of intent, giving the certified asbestos supervisor the opportunity to request a conference as described in WAC 296-65-050(4).
- 4. When the frequency of significant violations warrants a review of the competency of a certified asbestos contractor, the Asbestos Certification Program will conduct the review according to the following guidelines.
 - a. The program will conduct a preliminary review of the competency of the certified asbestos contractor to carry out the work for which the certificate was issued, considering the following questions:
 - i. Is there disregard of the standard during the asbestos project(s)?
 - ii. Do the significant violations involve serious health risk to employees and/or the public?
 - iii. Are there any extenuating circumstances beyond the contractors control?
 - iv. Is the contractor currently on probationary status?
 - v. Is there potential for continuance or repetition of significant violations?
 - b. After preliminary review of the competency of a certified contractor, the industrial hygienist responsible for overseeing the Asbestos Certification Program will notify the certified contractor of the department's intention to take one of the following actions.
 - i. Take no formal action.
 - ii. Place the contractor on probationary status for one year, giving the certified asbestos contractor the opportunity to request a conference as described in WAC 296-65-050(4). If a significant violation occurs during an asbestos project supervised by a certified asbestos contractor on probationary status, an additional review for decertification will be conducted
 - iii. Propose decertification through the written notice of intent, giving the certified asbestos contractor the opportunity to request a conference as described in WAC 296-65-050(4).

5. In making final determinations based on the preliminary findings described in #3 and #4 above, the Asbestos Certification Program will consider any evidence or information provided by the certificate holder (in a conference or through other means). With the concurrence of the Senior Program Manager, WISHA P&TS, the industrial hygienist responsible for overseeing the Asbestos Certification Program will take one of the following actions, providing the certificate holder with written notice of the action taken.
 - a. Suspend or revoke the certificate for a period of not less than six months.
 - b. Place the certificate holder on probationary status for six months.
 - c. Take no formal action against the certificate holder.